No. 77-1493

In the Supreme Court of the United States

OCTOBER TERM, 1978

GLADSTONE REALTORS, ET AL., PETITIONERS

v.

VILLAGE OF BELLWOOD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE, JR.,
Solicitor General,

DREW S. DAYS, III,
Assistant Attorney General,

LAWRENCE G. WALLACE,
Deputy Solicitor General,

HARRIET S. SHAPIRO,
Assistant to the Solicitor General,

WALTER W. BARNETT,
CHARLES PEREYRA-SUAREZ,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

CITATIONS

Cases:

Cases—Continued

Statutes and regulations:

Miscellaneous:

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1493

GLADSTONE REALTORS, ET AL., PETITIONERS

v.

VILLAGE OF BELLWOOD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

QUESTION PRESENTED

The United States will discuss the following question:

Whether, under Section 812 of the Fair Housing Act of 1968, 42 U.S.C. 3612, residents of a community have standing to maintain a suit against real estate companies and their agents to prevent racial steering in their community.

INTEREST OF THE UNITED STATES

Congress enacted the Fair Housing Act of 1968, 82 Stat. 81, as amended, 42 U.S.C. 3601 *et seq.*, to implement the "policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." Section 801, 42 U.S.C. 3601. The fulfillment of this objective depends in large measure on the resources available for enforcement. While the Department of Housing and Urban Development and the Attorney General have important responsibilities under the Act,[1] complaints by private persons are the principal method of securing compliance with the fair housing provisions, whether through conciliation or litigation.[2] *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 211. Accordingly, the United States has a substantial interest in this case, where the issue concerns the class of persons entitled to prosecute complaints under the Act.[3]

STATEMENT

A. The Statute

The Fair Housing Act prohibits discrimination in the sale or rental of housing by owners, financial

[1] See Sections 808-811, 813, 901 of the Act, 42 U.S.C. 3608-3611, 3613, 3631.

[2] See Sections 810, 812, 42 U.S.C. 3610, 3612.

[3] The United States participated as *amicus curiae* in the court of appeals in this case and in *TOPIC* v. *Circle Realty*, 532 F. 2d 1273 (C.A. 9), certiorari denied, 429 U.S. 859, which raised the same issue. We also so participated in *Trafficante*, *supra*, which involved a similar question.

institutions, and real estate brokers. Specifically, Section 804(a), 42 U.S.C. (and Supp. V) 3604(a), makes it unlawful, *inter alia*, to "refuse to sell or rent after the making of a bona fide offer * * * or otherwise make unavailable or deny, a dwelling to any person because of race."

The Act contains two remedial provisions permitting private persons to enforce its substantive prohibitions.[4] Under Section 810, 42 U.S.C. 3610, the Secretary of Housing and Urban Development is empowered to receive and investigate complaints regarding discriminatory housing practices. The Secretary must defer to state agencies that can provide relief, but if the state agency does not act, the Secretary may seek to resolve the complaint by "informal methods of conference, conciliation, and persuasion." If these efforts fail, the complainant may proceed to court under Section 810(d). Under Section 812, 42 U.S.C. 3612, the complainant may bring an action in court within 180 days after the alleged discriminatory practice occurred. Section 812 does not require the complainant to seek an administrative remedy before filing suit in federal court, as is required under Section 810.

[4] In addition, the Attorney General may bring a civil action in federal court against any person who "is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted" by the Act, or when the denial of such rights "raises an issue of general public importance" (Section 813, 42 U.S.C. 3613).

B. This Litigation

On October 24, 1975, respondents—the Chicago suburb of Bellwood, some of its white and black residents,[5] and an organization seeking to end racial discrimination in housing—filed separate suits against petitioners Gladstone Realtors and Robert A. Hintze Realtors.[6] Respondents alleged that petitioners engaged in racial steering of prospective homeowners[7] in violation of Section 804(a) of the Fair Housing Act of 1968, 42 U.S.C. (and Supp. V) 3604(a).[8] The suits were brought, *inter alia*, pursuant to Section 812 of the Fair Housing Act of 1968, 42 U.S.C. 3612. App. 4-7, 97-100.

In each case, the complaint alleged that the petitioner involved is an Illinois real estate business in Cook County, Illinois, which has engaged in a continuing practice of efforts to influence the choice of prospective homebuyers on the basis of race, and has

---

[5] Respondents Edward B. Powell, Mary P. Powell, Charles Elliott, and Vicki Simmons are white residents of Bellwood. App. 5, 97; Pet. App. 10. Respondent Joyce Perry is a black resident of Bellwood. App. 4, 97; 122; Pet. App. 10. Respondent Sandra Sharp is a black resident of the adjacent town of Maywood. App. 4, 97, 123; Pet. App. 10.

[6] Each case also included several real estate agents, employees of the company defendant, as individual defendants.

[7] The district court in *Gladstone* defined "racial steering" as "efforts to influence the choice of prospective homebuyers on the basis of race by discouraging prospective black homebuyers from purchasing homes in predominantly white areas" (Pet. App. 1). It also includes efforts to discourage white homeseekers from purchasing homes in integrated areas.

[8] Respondents also alleged violations of the Civil Rights Act of 1866, 14 Stat. 27, 42 U.S.C. 1982.

discouraged black homebuyers from purchasing homes in a specific part of Bellwood, Illinois (App. 5, 98, 141). The individual respondents, residents of Bellwood and an adjacent town, alleged that they "have been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society." App. 6, 99. Respondent Village of Bellwood alleged that it "has been injured by having the housing market in such village wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village." App. 6, 99. Respondent Leadership Council for Metropolitan Open Communities alleged that "acts and practices" of defendants "hamper and interfere with * * * [its] work and purpose" and "cost * * * [it] money to provide an audit and other efforts to eliminate such unlawful acts." App. 6, 98-99. Respondents sought damages and injunctive relief. App. 6-7, 99-100.

After initial discovery proceedings in both cases, petitioners filed motions for summary judgment. They contended that none of the respondents had standing to sue under Section 812, 42 U.S.C. 3612, because the individual respondents' discovery responses showed they were not homeseekers. App. 78-82, 143-147. On September 23, 1976, the district court in *Gladstone* granted the motion for summary judgment (Pet. App. A). Basing its opinion on *TOPIC* v. *Circle Realty*, *supra*, the court held that Section 812 protects only " 'direct victims' " of racial steering, and that since none of respondents were "actual home-

seekers," they lacked standing to assert their claims. Pet. App. 3-7. On September 29, 1976, the court in *Hintze* likewise granted petitioners' motion for summary judgment, explicitly adopting the earlier *Gladstone* opinion. Pet. App. 8.

The court of appeals consolidated the cases on appeal and reversed,[9] concluding that the allegations of the individual respondents here were "virtually identical" to those that this Court in *Trafficante* had held were sufficient to establish standing under the Fair Housing Act. Pet. App. 13. The court specifically rejected the argument adopted by the Ninth Circuit in *TOPIC*, that *Trafficante* established broad standing only for suits under 42 U.S.C. 3610. It concluded that *TOPIC* was wrongly decided and held that "there is no difference between the class of plaintiffs with standing to invoke § 3610 and the class with standing to invoke § 3612." Pet. App. 18, 20.[10]

ARGUMENT

INTRODUCTION AND SUMMARY

We submit that the individual respondents have standing to challenge petitioners' racial steering practices under the Fair Housing Act.[11] In *Trafficante* v. *Metropolitan Life Ins. Co.*, *supra*, 409 U.S. at 209, this Court, emphasizing that "complaints by private persons are the primary method of obtaining compliance with the Act," concluded that "[w]e can give vitality to § 810(a) only by a generous construction" of the standing requirements (*id.* at 212). That conclusion is equally valid for complaints arising under Section 812. Nothing in that Section, its legislative history, or the consistent administrative interpretation of the Act suggests a different result, nor are the interests asserted by the respondents here significantly different from those asserted by the petitioners in *Trafficante*. Indeed, if anything, the respondents here allege a more far-reaching effect of the discriminatory practices on their lives than was alleged in *Trafficante*. Moreover, here, as in *Trafficante*, the complainants' standing is supported by a consistent course of administrative interpretation by the Department of Housing and Urban Development, which has substantial responsibilities for administering the Act. Accordingly, the holding and rationale of *Trafficante* lead to the conclusion that respondents here also have standing to enforce the Act.

The standards for determining questions of standing have recently been summarized by this Court in *Warth* v. *Seldin*, 422 U.S. 490. The Court there noted that the limitation on federal court jurisdiction in Article III of the Constitution requires that the plaintiff show the existence of an actual " 'case or

---

[9] The court affirmed the denial of standing to the non-profit corporation (Pet. App. 15).

[10] The court also held that the municipality had standing to sue (Pet. App. 13-14).

[11] Because the individual respondents, in our view, have standing to assert their claims under the Fair Housing Act, we will not address the question of the standing of the other respondents, nor the applicability of the Civil Rights Act of 1866, 42 U.S.C. 1982. See *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 264 n. 9.

controversy' " between himself and the defendant. "A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action' " (422 U.S. at 499; citations omitted). In other words, the plaintiff "must allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he personally would benefit in a tangible way from the court's intervention" (*id.* at 508). Beyond the constitutional necessity of showing actual injury to the plaintiff caused by the defendant's actions, prudential considerations ordinarily counsel denying standing to persons asserting generalized grievances or relying on the legal rights and interests of others. But, the Court emphasized, "so long as [the constitutional] requirement is satisfied, persons to whom Congress has granted a right of action, either expressly or by clear implication, may have standing to seek relief on the basis of the legal rights and interests of others, and, indeed, may invoke the general public interest in support of their claim" (*id.* at 501; citations omitted).

This Court's application of these principles in *Warth* and in *Trafficante* indicates that the court of appeals correctly concluded that the individual respondents here have standing to challenge petitioners' racial steering practices.[11a]

[11a] The substantial similarity between portions of the argument in this brief and in respondent's brief in this Court—a similarity of which we became aware only upon receiving service of respondent's brief after this brief was in page proof—is evidently due to their derivation from a common source: the government's brief *amicus curiae* in *Fair Housing Council of Bergen County, Inc.* v. *Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071 (D. N.J.). A copy of that brief, and of other government filings in cases involving the same issue, was provided to respondents before the briefing of this case below. There was no exchange of draft briefs under preparation for filing in this Court. The analysis of the legislative history of Sections 810 and 812 of the Fair Housing Act is the primary example of this overlap.

I

SUITS BY PERSONS SUCH AS RESPONDENTS ARE NECESSARY TO ACHIEVE THE PURPOSE OF THE ACT

Racial steering of potential homeowners, which involves determining on the basis of race which houses will be shown—and thus made available—to the homeseeker, violates 42 U.S.C. (and Supp. V) 3604(a) because it "make[s] unavailable * * * a dwelling to * * * person[s] because of race." *E.g.*, *Moore* v. *Townsend*, 525 F. 2d 482 (C.A. 7); *Fair Housing Council of Bergen County, Inc.* v. *Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071 (D. N.J.); *United States* v. *Henshaw Bros., Inc.*, 401 F. Supp. 399 (E.D. Va.); *Zuch* v. *Hussey*, 366 F. Supp. 553 (E.D. Mich.).

This Court in *Trafficante*, *supra*, 409 U.S. at 211, stressed that complaints by private persons are the primary method of securing compliance with the Fair Housing Act, and that such persons "act not only on their own behalf but also 'as private attorneys general in vindicating a policy that Congress considered to be of the highest priority.' " This case provides a

particularly strong example of the need for such "private attorneys general," since racial steering violations of the Act are otherwise likely to be immune from attack.

As the court of appeals noted (Pet. App. 11-12), it is difficult for homeseekers who are the direct victims of racial steering by real estate companies to detect the discrimination. A black person who is shown listings in particular neighborhoods does not ordinarily have a way of knowing what listings are made available to whites, and can therefore seldom compare his experience with those of his white counterparts. In the absence of such a comparison, he cannot be sure that his rights under the Act are being violated, much less assemble the evidence necessary to enforce those rights in court. In these circumstances, persons such as respondents, who are not actual homeseekers, may be "the only effective adversary" of the illegal practice. Cf. *Barrows* v. *Jackson*, 346 U.S. 249, 259; *Sullivan* v. *Little Hunting Park, Inc.*, 396 U.S. 229, 237.[12] Thus here, as in *Trafficante* (409 U.S. at 212), "a generous construction" of the standing requirement is necessary to "give vitality" to the enforcement provisions of the Act.

---

[12] This analysis is confirmed by the experience of the Housing and Credit Section of the Justice Department's Civil Rights Division: most of the private cases involving racial steering have been brought by persons similarly situated to respondents in the present case, usually on the basis of information developed by "testers"—persons of different races who make identical housing requests to the real estate company to determine whether both are offered houses in the same areas.

II

THE INTEREST ALLEGED BY RESPONDENTS IS SUBSTANTIALLY IDENTICAL TO THAT FOUND SUFFICIENT TO PROVIDE STANDING IN *TRAFFICANTE*

The individual respondents here alleged in substance that petitioners' racial steering practices are resulting in unnaturally rapid racial change amounting to resegregation of their area and that they are thus being deprived of the social, professional, and economic benefits of living in an integrated community. App. 5-6, 98-99. In *Trafficante*, tenants of an apartment complex housing approximately 8200 residents similarly alleged that their landlords' discriminatory rental practices deprived them of the social and professional benefits of living in an integrated community (409 U.S. at 206-208). In both cases, persons who have not themselves been denied housing because of their race claim standing to challenge violations of the Act based on their interest in living in a community from which persons are not unlawfully excluded because of their race. This Court concluded in *Trafficante* that this interest was sufficient both to satisfy the constitutional standing requirements and to bring plaintiffs within the statutory grant of standing (409 U.S. at 211):

> The dispute tendered by this complaint is presented in an adversary context. *Flast* v. *Cohen*, 392 U.S. 83, 101. Injury is alleged with particularity, so there is not present the abstract question raising problems under Art. III of the

> Constitution. The person on the [defendant's] blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole community," 114 Cong. Rec. 2706, and as Senator Mondale * * * said, the reach of the proposed law was to replace the ghettos "by truly integrated and balanced living patterns." 114 Cong. Rec. 3422.

That language is directly applicable here. Petitioners contend that there is a constitutionally significant difference in the interests asserted, simply because respondents here are residents of a suburban village, instead of a large apartment complex as in *Trafficante*. But that factual difference has no significance to the relevant inquiry. Respondents here, like petitioners in *Trafficante*, have alleged an actual injury to their own interests that results from petitioners' illegal activities.

The injury to respondents' interest in living in an integrated community is no less real because it is suffered by the entire community, rather than only by the residents of a single housing complex.[13] In-

[13] Petitioners argue (Br. 49) that respondents lack standing because they allege an "extremely generalized injury shared by a large group of persons." However, this Court has held, in an analogous context, that standing is not to be denied simply because many people suffer the same injury. *United States* v. *SCRAP*, 412 U.S. 669, 687. The result, otherwise, would be that "the most injurious and widespread Government actions could be questioned by nobody." *Id.* at 688. The plaintiffs in *SCRAP* (who claimed only a harm to their use and enjoyment of the natural resources in the Washington area) were thus allowed standing to challenge ICC orders, which they alleged violated the National Environmental Policy Act of 1969.

deed, the harm suffered by respondents may be more severe than that of the plaintiffs in *Trafficante*. Residents of an all-white housing complex need only look to the next residential facility for interracial associations and need not move to another community to avoid living in a segregated environment, but Bellwood residents may have to go to an entirely different community or area. See *Fair Housing Council of Bergen County, Inc.* v. *Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071, 1081 (D. N.J.).[14]

This Court's reliance in *Trafficante* (409 U.S. at 211) on *Shannon* v. *United States Department of*

The *SCRAP* rationale is equally applicable here, where respondents sue under the Fair Housing Act to protect their right to live in an unsegregated community. The challenged practice of racial steering is particularly pernicious because it is apparently widespread and is difficult to detect and prove. Of the more than 300 cases brought under the Fair Housing Act by the United States (see 42 U.S.C. 3613) to date, at least 80 have involved allegations of some form of racial steering.

[14] Every other court that has considered the question has found interests like those asserted by respondents here constitutionally sufficient to provide standing to challenge racial steering practices. *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co.*, 429 F. Supp. 486 (E.D. N.Y.); *Fair Housing Council of Bergen County, Inc.* v. *Eastern Bergen County Multiple Listing Service, Inc., supra;* see also *Village of Park Forest* v. *Fairfax Realty*, P-H EOH Rep. ¶ 13,784, decided August 9, 1976). The court in *TOPIC* v. *Circle Realty*, 532 F. 2d 1273 (C.A. 9), certiorari denied, 429 U.S. 859, did not reach the constitutional issue, since it decided there was no statutory grant of standing. See *infra* at pp. 20-23.

Housing and Urban Development, 436 F. 2d 809 (C.A. 3), is also inconsistent with petitioners' asserted distinction. In *Shannon*, businessmen and residents of an urban renewal area in Philadelphia brought suit under the Fair Housing Act and other statutes claiming that the action of HUD threatened to resegregate their community. The court of appeals held that the plaintiffs had suffered a cognizable injury because HUD's actions not only could impair their economic interests, but would affect "the very quality of their daily lives." *Shannon*, *supra*, 436 F. 2d at 818. Accord, *South East Chicago Commission* v. *Department of Housing and Urban Development*, 343 F. Supp. 62, 66 (N.D. Ill.), affirmed, 488 F. 2d 1119 (C.A. 7); *Fox* v. *United States Housing and Urban Development*, 416 F. Supp. 954 (E.D. Pa.). The respondents here also reside in a specific community and assert that the quality of their daily lives is adversely affected by the racial steering practices of local real estate companies. App. 5-6, 98-99. Here, as in *Shannon*, the complaining residents have suffered actual injury from the defendants' alleged endeavors to resegregate their community.

Moreover, the causal connection between racial steering and segregated communities has been demonstrated in federal litigation. See, *e.g.*, *Zuch* v. *Hussey*, 394 F. Supp. 1028 (E.D. Mich.), affirmed, 547 F. 2d 1168 (C.A. 6).[14a] Petitioners' assertions (Br.

[14a] See also, *Brown* v. *State Realty Co.*, 304 F. Supp. 1236, 1240 (N.D. Ga.); *United States* v. *Mitchell*, 335 F. Supp. 1004, 1005-1006 (N.D. Ga.), affirmed, 474 F. 2d 115 (C.A. 5), certiorari denied, 414 U.S. 826; *Barrick Realty, Inc.* v. *City of Gary, Indiana*, 354 F. Supp. 126, 135 (N.D. Ind.), affirmed, 491 F. 2d 161 (C.A. 7), on the role of real estate agents in encouraging rapid racial change in a community.

In *Zuch* v. *Hussey*, *supra*, the court's finding of a causal connection between racial steering and resegregation of the community was aided by the testimony of an expert in sociology and social psychology and an expert in population and demographics. These experts explained to the court how the practice of racial steering can lead to the destruction of integrated neighborhoods. 394 F. Supp. at 1031-1034. Respondents here apparently planned to utilize similar expert testimony at trial on the merits. See App. 28, 117.

Moreover, as the court below noted (Pet. App. 12), petitioners have not yet responded to respondents' requests for discovery; those responses may well disclose instances in which actual homeseekers were steered away from appropriate housing.

47-50) that such causal relationships are "speculative" and "insubstantial" are no substitute for a reasoned decision, after proof developed through discovery and expert testimony, concerning the effects of petitioners' alleged actions on the racial makeup of the Bellwood community. See *Trafficante*, *supra*, 409 U.S. at 209-210.[15]

Petitioners nevertheless suggest that the causal connection between their actions and the respondent's injury is too weak to afford standing to respondents. They attempt to analogize this case to *Warth* v. *Seldin*, *supra*, in which various individuals and organizations challenged a community zoning ordinance, alleging that it excluded persons of low and moderate income (422 U.S. at 493). Emphasizing that the petitioners'

allegations suggest "that their inability to reside in [the community] is the consequence of the economics of the area housing market, rather than of respondents' assertedly illegal acts" (422 U.S. at 506), the Court found that petitioners in *Warth* had failed to show that "absent [the challenged] practices, there is a substantial probability that * * * if the court affords the relief requested, the asserted inability of petitioners will be removed" (*id.* at 504).

There is, at least *prima facie*, such a substantial probability here. Respondents' complaint (like that in *Trafficante*) alleges that their desire to live in an integrated community is directly frustrated by petitioners' discriminatory refusal to provide equal access to available housing to any qualified applicant.[16] Of course, the actual benefit sought, here as in *Trafficante*, depends ultimately on the housing decisions of third parties, but plaintiffs here, as in *Trafficante*, should be allowed to prove that, absent the artificial barriers imposed by defendants, these decisions would be likely to result in housing patterns more reflective of the racial mixture in the area.

[16] This case is thus quite different from *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 42-43, in which plaintiffs' alleged injury resulted from the actions of persons not before the court. See also *Warth* v. *Seldin*, *supra*, 422 U.S. at 505.

III

SECTION 812 OF THE FAIR HOUSING ACT, 42 U.S.C. 3612, CONFERS STANDING ON THESE RESPONDENTS

Petitioners' attempt to analogize this case to *Warth* v. *Seldin*, *supra*, rather than *Trafficante* fails for an additional independent reason. In *Warth*, this Court noted that the "critical distinction" between that case and *Trafficante* was the failure of the *Warth* plaintiffs to assert, or make out, a claim under the Fair Housing Act. 422 U.S. at 513. Here, as in *Trafficante*, respondents rely on a statutory right "which can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute." *Warth* v. *Seldin*, *supra*, 422 U.S. at 514. See also *Linda R. S.* v. *Richard D.*, 410 U.S. 614, 617 n. 3; *Sierra Club* v. *Morton*, 405 U.S. 727, 732 n. 3; *Trafficante* v. *Metropolitan Life Ins., Co.*, *supra*, 409 U.S. at 212. That right under the Fair Housing Act has allegedly been violated by petitioners' racial steering practices. See, *e.g.*, *Zuch* v. *Hussey*, *supra*.

Petitioners' argument that respondents may not rely on a statutory right to sue under the Fair Housing Act turns on the assertions that *Trafficante* construed only Section 810 of that Act, 42 U.S.C. 3610, and that Section 812, 42 U.S.C. 3612, upon which respondents rely, must be construed to include a substantially narrower grant of standing. The first assertion is not free from doubt, and the second is in any event incorrect.

A. *Trafficante* Suggests No Difference in the Standing Conferred by Sections 810 and 812 of the Act

Trafficante began as a suit brought pursuant to both Section 810 and Section 812; indeed, the intervening plaintiffs asserted standing only under Section 812 and 42 U.S.C. 1982. See *Trafficante* v. *Metropolitan Life Insurance Co.*, 446 F. 2d 1158 (C.A. 9), affirming 322 F. Supp. 352 (N.D. Cal.). Although this Court focused on Section 810 in making its ruling, it discussed both Sections 810 and 812 without distinguishing between the two so far as standing requirements are concerned. See, *e.g.*, 409 U.S. at 209.[17] Thus, it was the understanding of the district court in *Trafficante* on remand (see Consent Order of December 7, 1972), and of other courts that have considered this question, that this Court's decision applies to claims arising under Section 812 as well as those under Section 810. *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co.*, *supra*; *Village of Park Forest* v. *Fairfax Realty*, *supra*. See also *Fair Housing Council of Bergen County, Inc.* v. *Eastern Bergen County Multiple Listing Service, Inc.*, *supra*. Contra, *TOPIC* v. *Circle Realty*, 532 F. 2d 1273 (C.A. 9), certiorari denied, 429 U.S. 859.[18]

---

[17] Although the Court specifically noted (409 U.S. at 209 n. 8) that it found it unnecessary to decide whether petitioners had standing under 42 U.S.C. 1982, it made no such disclaimer with respect to Section 812, on which some of petitioners relied exclusively, apparently not considering the differences between the two provisions of the Housing Act significant.

[18] The court of appeals in the present case found it "impossible to tell with certainty" whether *Trafficante* was meant to control cases arising under Section 812, see Pet. App. 17-18, but concluded, as we do, that in any event the rationale of *Trafficante* supports respondents' standing here.

Moreover, in *Trafficante* this Court accorded "great weight" to the construction given the Fair Housing Act by the Department of Housing and Urban Development, since that agency has substantial responsibilities for administering the Act. 409 U.S. at 210. See, *e.g.*, *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433-434; *Udall* v. *Tallman*, 380 U.S. 1, 16.

HUD has consistently construed Sections 810 and 812 as providing alternative judicial remedies, either of which may be invoked by the same class of persons. In the regulations promulgated by the Secretary to enforce the Act, the Secretary provides that: "The person aggrieved shall be notified of the date of filing [of the administrative complaint pursuant to Section 810] and of his right to bring court action under sections 810 and 812." 24 C.F.R. 105.16.[19]

Although HUD has no enforcement powers under Section 812, we are advised by HUD that, since the passage of the Act, is has accepted, investigated, and attempted to conciliate racial steering complaints from fair housing groups, municipalities, and residents of the communities involved whose interest was in counteracting efforts to segregate their communities, as well as from actual homeseekers. The letters sent by HUD to all such complainants (whether or not

---

[19] The definition of "person aggrieved" contained in the regulations is the same definition contained in Section 810 of the Act. Compare 24 C.F.R. 105.12 with 42 U.S.C. 3610(a).

they are actual homeseekers) at every step in the administrative complaint process have informed them that they may also institute litigation pursuant to Section 812. In addition, HUD's 1976 pamphlet, *Fair Housing USA*, describes Sections 810 and 812 as being alternative modes of enforcement of the Act. HUD's position has consistently been that both remedies are available for use by any person enforcing rights under the Fair Housing Act, and that a challenge to a discriminatory housing practice under either Section does not bar a complainant from pursuing the alternative remedy.

B. The Structure of the Statute and Its Legislative History Indicate That There Is No Difference in the Scope of the Two Sections

In arguing that Section 812 should be read more narrowly than Section 810, petitioners emphasize (Br. 22-23, 29) that only Section 810 describes the parties authorized to file suit as "persons aggrieved". They further point out (Br. 21-22) that only that Section requires plaintiffs to exhaust their administrative remedies before filing suit. Neither of these differences between the two sections provides a basis for a meaningful distinction between their standing requirements.

Petitioners in effect ask this Court to adopt the rationale of the Ninth Circuit in *TOPIC* v. *Circle Realty*, *supra*, 532 F. 2d at 1275-1276.[20] Although

[20] That rationale is inconsistent with the decisions in most cases that have considered the issue. See, in addition to the cases noted at p. 18, *supra*, *Heights Community Congress* v. *Rosenblatt Realty*, 73 F.R.D. 1 (N.D. Ohio); *Cornelius* v. *City of Parma*, 374 F. Supp. 730, 741 (N.D. Ohio), vacated on other grounds, 506 F. 2d 1400 (C.A. 6), vacated for further consideration, 422 U.S. 1052, remanded, 521 F. 2d 1401 (C.A. 6). Cf. *Zuch* v. *Hussey*, 366 F. Supp. 553 (E.D. Mich.) and 394 F. Supp. 1028 (E.D. Mich.).

the *TOPIC* court apparently made no inquiry into the legislative history of the Act (the opinion makes no reference to such history), it concluded that:

(1) Since Section 810 contains a broad definition of "person aggrieved",[21] and since Section 812 has no definition, Section 812 must be narrower. 532 F. 2d at 1275.

(2) The purpose of direct suits pursuant to Section 812 was to provide swift relief to a narrow class of complainants, whereas Section 810 "contemplates the resolution of disputes in the slower, less adversary context of administrative reconciliation and mediation." 532 F. 2d at 1276.

(3) Cases dealing with "prolonged practice[s] spanning many years" rather than individual grievances should more appropriately go through HUD and be handled pursuant to Section 810, whereas Section 812 can better accommodate complainants "seeking to rent or purchase [specific] housing." *Ibid.*

The legislative history of the Act does not contain a single suggestion that standing under Section 812

[21] The term is defined as including "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur." 42 U.S.C. 3610.

was designed to be narrower than standing under Section 810.[22] Throughout the legislative history, the administrative and judicial remedies were described as alternatives to one another—to be used against the same kinds of conduct, and available to the same kinds of complainants. Moreover, the legislative history shows that the *TOPIC* court was in error with respect to each of the three above-cited propositions on which it rested its decision. The words "person aggrieved" were intended to limit, rather than expand, standing, so that their omission from Section 812 suggests at least equal standing to that accorded to complainants under Section 810. The administrative remedy was included not for "slower, less adversary" proceedings, but because its proponents regarded it as quicker.[23] Finally, far from intending to

[22] The legislative history cited by petitioners (Br. 29-34) indicates that Congress included the "bona fide offer" requirement in the Act to protect against the use of the Act for purposes of harassment. 114 Cong. Rec. 5515 (1968). This colloquy does not suggest that any of the participants believed that there was any difference in the types of complaints to be handled by HUD and the courts, still less that Section 812 contained a stricter standing requirement than Section 810. In any event, the "bona fide offer" requirement applies only to refusals to sell or rent housing and not to the other prohibitions (such as racial steering) in Section 804, 42 U.S.C. (and Supp. V) 3604. *United States* v. *Youritan Construction Company*, 370 F. Supp. 643, 650 (N.D. Cal.), modified and affirmed, 509 F. 2d 623 (C.A. 9). Thus, the legislative history of that requirement in no way suggests that Congress intended to limit persons affected by racial steering violations to administrative remedies pursuant to Section 810.

[23] The congressional concern about the slow pace of direct litigation is also reflected in the requirement of expedition in

confine major, complex cases to HUD rather than the courts in the first instance, Congress permitted the complainant to choose an administrative remedy in any case, in part on the theory that HUD could dispose swiftly of minor cases and prevent them from becoming a burden for the courts.[24]

1. *The Omission of the Phrase "Person Aggrieved" From Section 812 Does Not Limit the Scope of That Section*

The legislative history of the 1968 Act begins in 1966, when administration bills containing provisions for "open housing" were introduced in both the House and Senate.[25] The 1966 bills provided for enforcement only by an action in a United States District

cases brought under Sections 812 and 813. See Section 814, 42 U.S.C. 3614.

[24] The theory that the more complex cases were to be handled administratively overlooks the fact that even under Section 810, a person may seek a judicial remedy in a *de novo* proceeding. Furthermore, "pattern or practice" suits and other suits raising issues of general public importance brought by the Attorney General under Section 813 can be expected to involve issues very similar to those brought by individuals acting as "private attorneys general" under Section 812. There is no reason to conclude that Congress thought the courts an appropriate forum only for the former class of cases, and not the latter.

[25] 112 Cong. Rec. 9501 (Introduction of H.R. 14770, referred to Judiciary Committee, May 2, 1966); 112 Cong. Rec. 9501 (Introduction of H.R. 14765, referred to Judiciary Committee, May 2, 1966); 112 Cong. Rec. 9393 (Introduction of S. 3296, April 28, 1966).

Court or in an appropriate state court.[26] The question of who would have standing to bring suit was raised in both House and Senate hearings. Representative Cramer criticized the bill on the ground that it simply provided that the " 'rights granted * * * may be enforced by civil action,' " without limiting standing to "persons aggrieved." Representative Cramer observed that the right to sue under the comparable public accommodations statute was limited to "the party aggrieved," and that omission of this limitation indicated that a third party might bring the suit on the victim's behalf. Attorney General Katzenbach stated that he had no objection to the words being inserted, but that he thought it unnecessary. Hearings on Civil Rights, 1966 (H.R. 14765) before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 2d Sess. 1203 (1966). The words "persons aggrieved" were not inserted. In Representative Cramer's view, this made standing broader than if the words had been included; in Attorney General Katzenbach's view, it made no difference. Both views are directly contrary to that of the court in *TOPIC*, which thought the inclusion of the words "persons aggrieved" in Section 810 made standing under that Section broader.[27]

---

[26] Hearings on Civil Rights, 1966 (H.R. 14765) before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong. 2d Sess. 716 (1966). Section 403 of that bill contained a provision similar to the provision in Section 804 of the 1968 Act that has been held to prohibit racial steering.

[27] The Senate hearings contain Senator Ervin's comment that the judicial remedy provision "doesn't even have a requirement that the plaintiff shall have been refused the rental

2. *Section 812 Was Not Designed to Provide Swifter Relief Than Section 810 or to Apply to a Smaller Group of Complainants*

Congress began considering proposals for administrative remedies during its hearings on the 1966 bills.[28] Testimony at the hearings and the floor debate indicate that the purpose of the proposed alternative administrative remedies was to provide an expeditious method of resolving complaints of housing discrimination without the necessity of filing a complaint in federal court.

One such proposal would have created a Fair Housing Board, with powers similar to those of the National Labor Relations Board. Report to accompany H.R. 14765 of the Committee on the Judiciary, H.R. Rep. No. 1678, 89th Cong., 2d Sess. 9-12 (1966).[29] Representative Conyers summarized as follows the

---

or purchase of real estate", and that "a person who hasn't even applied for admission" to a residential home could recover damages. Hearings on S. 3296, etc. before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 89th Cong., 2d Sess. 395-396 (1966).

[28] Hearings on S. 3296, etc. before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 89th Cong., 2d Sess. (p. 554, Roy Wilkins, Chairman of the Leadership Conference on Civil Rights and Executive Director of the National Association for the Advancement of Colored People, June 16, 1966; p. 68, Senator Edward M. Kennedy, June 6, 1966; p. 69, Senator Hugh Scott, June 6, 1966; p. 915, Senator Javits, June 28, 1966) (1966).

[29] The Board would have been authorized to adjudicate complaints of housing discrimination to be filed with HUD, if HUD was unable to resolve the m through conciliation (112 Cong. Rec. 17122 (1966)).

need for an administrative procedure to supplement the judicial remedies already provided (112 Cong. Rec. 18402 (1966)):[30]

> Experience with comparable State and local agencies repeatedly has shown that the administrative process is quicker and fairer. It more quickly implements the rights of the person discriminated against and also quickly resolves frivolous and otherwise invalid complaints. Conciliation is easier in an informal administrative procedure than in the formal judicial process. Also individual court suits would place a greater burden of expense, time and effort on not only the plaintiff but on all other parties involved, including the seller, broker and mortgage financier, and on the judicial system itself.

Representative Conyers further noted (*id.* at 18407) that "parallel forms of relief * * * [would be] available in court and before the Commission". Indeed, Representative McClory opposed the creation of the Fair Housing Board precisely because it created a "duplicate matter of enforcement" with the judicial method (112 Cong. Rec. 18401, 18405 (1966)).

The 1966 bills were not enacted, and legislation similar to that introduced in 1966 was proposed in 1967 (113 Cong. Rec. 3899, 3922, 3946). The 1967 proposals contemplated suits by the Attorney Gen-

[30] Rep. Conyers was a member of the Judiciary Committee when the Fair Housing Board Amendment was discussed; the quoted material is contained in a statement explaining that amendment prepared for the Congressional Record. See also *id.* at 18405, 18409.

eral, supplemented by administrative procedures within HUD. HUD was to be given authority to issue cease and desist orders and such orders were to be subject to judicial review. Again, the alternative administrative procedure was proposed on the theory that it would be faster than litigation.[31] No legislation was enacted in 1967.

3. *Sections 810 and 812 Were Designed to Provide Parallel Remedies for the Redress of Precisely Similar Grievances*

On February 28, 1968, Senator Dirksen proposed an amendment containing the enforcement procedure that was ultimately enacted in the Fair Housing Act.[32] The Senate passed the bill substantially in this form on March 11, 1968,[33] and the House enacted it on April 10, 1968.[34]

During the floor debate in the House on the Dirksen amendment, Representative Celler, the Chairman of the Judiciary Committee which reported out the bills, explained that Section 812, which provides for direct litigation in federal or state court without prior administrative process, was "[i]n addition to adminis-

[31] Hearings on S. 1358, etc. before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 108 (testimony of Roy Wilkins, Director of the NAACP and Chairman, Leadership Conference on Civil Rights) (1967).

[32] 114 Cong. Rec. 4570.

[33] 114 Cong. Rec. 5992.

[34] 114 Cong. Rec. 9620.

trative remedies" contained in Section 810 (114 Cong. Rec. 9560 (1968)). His explanation of the three methods of obtaining compliance provided for in the bill (administrative conciliation, private suits, and suits by the Attorney General) does not classify any rights as enforceable exclusively under Section 810, nor does it differentiate between classes of plaintiffs or suggest that the Section 810 procedure is for some kinds of complaints and the Section 812 procedure for others. 114 Cong. Rec. 9560-9561 (1968). That no distinction was intended as to eligible plaintiffs and remedies as between Section 810 and 812 was also recognized by a memorandum prepared by the staff of the House Committee on the Judiciary, which Representative Gerald Ford urged the House to consider and placed in the Congressional Record (114 Cong. Rec. 9609 (1968)). That memorandum explained that Section 812 is "apparently an alternative to the conciliation-then-litigation approach" of Section 810 (*id.* at 9612).

In summary, there is no suggestion in any of the legislative history in 1966, 1967 or 1968 that a narrower class of plaintiffs could litigate directly under Section 812 than might utilize the administrative process under Section 810. On the contrary, the administrative remedy was designed to provide an alternative method of seeking relief that is less formal and less expensive but lacks compulsive power, with the assurance that the complainant remains free to seek a judicial remedy if he prefers.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

DREW S. DAYS, III,
Assistant Attorney General.

LAWRENCE G. WALLACE,
Deputy Solicitor General.

HARRIET S. SHAPIRO,
Assistant to the Solicitor General.

WALTER W. BARNETT,
CHARLES PEREYRA-SUAREZ,
Attorneys.

SEPTEMBER 1978.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1978 273035 116